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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,128	06/05/2002	Cyrill G. Gallant	0030-0205P	2639

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER

CORBIN, ARTHUR L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 10/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/031,128

Applicant(s)

GALLANT ET AL.

Examiner

Arthur L Corbin

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01-16-02,05-01-02,06-05-02,09-01-04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-16,5-01,6-05-02</u> . | 6) <input type="checkbox"/> Other: _____ |

1. Claims 6-11 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 1, 2004.

Applicant's traversal has been considered but is not convincing. Each group of claims set forth in the restriction requirement involves a different special technical feature or inventive concept, thereby making the claims lack unity under PCT practice. In claims 1-5 and 8, the inventive concept, which is lacking in the other claims, involves a freeze-thaw cycle to separate meat from shell. In claims 6 and 7, the inventive concept, which is lacking in the other claims, involves filling an eviscerated crustacean with a stuffing. In claim 9, the inventive concept, lacking in the other claims, pertains to a stuffed crustacean, regardless of how the product is prepared. Finally, in claims 10-11, a composition of crustacean meat and roe is claimed, which can be used as an edible product without being stuffed into an eviscerated crustacean. As a result, each group of claims is separate and distinct and lacks unity of invention under PCT practice.

2. Claim 5 is objected to because of the following informalities: In claim 5, line 1, "any of" should be added before "in". Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Art Unit: 1761

4. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is indefinite since it is not clear if the vacuum aspiration step is the same as in claim 1, b), (i) or is in addition thereto since claim 1 vacuum aspiration is used to remove and recover the meat, and claim 2 vacuum aspiration is used to treat the already detached meat.

Correction is required without new matter.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rutledge (4,053,964; column 1, lines 12-13; and column 2, lines 3-5, 14-16, 24-26 and 44-45).

Rutledge discloses removing raw craw or lobster meat from its intact shell by first subjecting the shell to freezing and then thawing and subsequently removing the meat from the shell manually.

Art Unit: 1761

8. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rutledge in view of Fehmerling (3,513,071; column 1, lines 40-42; Example 1 and claim 3).

It would have been obvious to thaw the frozen crustacean in Rutledge by immersing in tap water since such a crustacean thawing technique is well known, as evidenced by Fehmerling. Further, it would have been obvious to vacuum aspirate the crustacean to aid in meat separation from the shell in the process of Rutledge since it is conventional to vacuum aspirate crustacean meat for this purpose, as evidenced by Fehmerling.

9. Claims 5/1 and 5/2 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Rutledge in view of Trelease et al (3,773,962, claim 8).

It would have been obvious to vacuum aspirate the crustacean meat in the process of Rutledge since it is old to vacuum eviscerate lobster meat, as evidenced by Trelease et al.

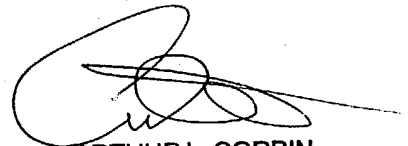
10. Any inquiry concerning this communication from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can generally be reached on Monday--Friday from 10:30 to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.L. Corbin/dh
October 27, 2004



ARTHUR L. CORBIN
PRIMARY EXAMINER
10-27-04